



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

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MEMORANDUM

TO: Bob Klein
Board Chair
Alcoholic Beverage Control Board

DATE: March 26, 2019

FROM: Julie Anderson
Commissioner, DCCED

RE: Recreational Site License Interpretations

Chairman Klein,

There has been great discussion and much contention regarding the current interpretations of the Alcoholic Beverage Control Board's Recreational Site License (Sec. 04.11.210). The Department of Commerce, Community, and Economic Development (DCCED) would like to share our concerns. Below is the statute as currently written, a timeline and our analysis for your consideration.

AS 04.11.210. RECREATIONAL SITE LICENSE

- (a) The holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event, for consumption in designated areas at the site.
- (b) The biennial fee for a recreational site license is \$800.
- (c) In this section, "recreational site" includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season.

TIMELINE

1959 – ABC Board created

1979 – Alaska Legislature adopts a comprehensive revision of alcoholic beverage laws

1983 – State of Alaska Attorney General Norman C. Gorsuch issues a legal analysis that provides the opinion AS 04.10.145 (c) "In this section, 'recreational site license' means, but is not limited to, a location where..." and indicates "The new act expressly expands the permissible activities."

2005 – Sectional Analysis for House CS for CS SB101 expressly states "*Section 1. AS 04.11.210

(c) is amended to read: (c) In this section, 'recreational site' includes [MEANS, BUT IS NOT LIMITED TO,] a location where..." Additionally, May 2, 2005, Mr. Crawford states for the

record "It is very important that the reviser's bills do not make any new policy choices, even inadvertently."

2014 – Legislative Audit: Found 15 of 32 recreational site licenses did not meet the required criteria (as interpreted) and recommended no more than a 3 year extension of the board as of June 30, 2015 (since the marijuana initiative passed).

2017 – Legislative Audit: Found 10 of 29 recreational site licenses did not meet the criteria, then 6 of the 10 were notified they would not be issued a recreational site license.

ANALYSIS

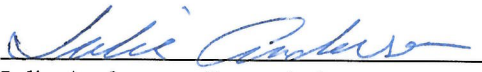
The Senate Journal Supplement (dated July 1, 2005) under Sectional Analysis states "Bill section 1 improves the form of AS 04.11.210 (c). The term "includes" incorporates the concept of "is not limited to" under AS 01.10.040 (b) and is the preferred usage for legal drafting in this situation. The point was not to change or make new policy, as more recent and stricter interpretations have indicated, but to include grammatical corrections and conform statutes to the drafting-manual style.

AS 04.11.210 (c) was correctly interpreted and implemented, until 2014 and 2017, when Legislative audits personnel offered an alternative, narrower interpretation. The purpose of a legislative audit is to evaluate the agency's implementation of the law as it is written, not offer an opinion.

The DCCED would like to request the Alcoholic Beverage Control Board reconsider its position on this issue. Please allow the licensees who have utilized the Recreational Site License, some for more than 30 years, to continue operating as productive members of the Alaska economy. This can easily be reversed and take a more business friendly position, while staying within the original, broader intent of the statute.

Governor Dunleavy's office has reviewed this timeline and our analysis. We are in alignment and ask for your consideration.

Sincerely,

 3/26/19
Julie Anderson, Commissioner Date

cc: Governor Michael J. Dunleavy